

The works



Rules: Regarding Natalie Attired (our client) terminated for “ misconduct” An individual shall be disqualified for and shall not be eligible to receive benefits: If it is determined by the division that the individual has been discharged for misconduct connected with the individual's employment.

Application: **Case 1 - Mitchell v. Lovington Good Samaritan Center, Inc. , 555 P. 2d 696 (N. M. 1976) Zelma Mitchell was a nurse’s aide and was terminated for alleged misconduct with priors.

In order to establish misconduct the appellee shall indicate no conduct evincing such wilful or wanton disregard of an employer’s interest as is found in deliberate violations or disregard of standards of behavior, or carelessness or negligence of such degree for termination. This case should not apply to our client due to using the wilful and wanton disregard for the employers interest and apply the facts to the rule was adopted due to her continual misconduct knowingly repeating itself. **Case 2 - Rodman v.

New Mexico Employment Sec. Dept. 107 N. M. 758, 764 P. 2d 1316, (N. M. 1988). Rodman was denied unemployment compensation benefits after being terminated under the hospital personnel policies following a “ third corrective action” notice due to personal problems adversely impacting her work. If substantial evidence existed that Rodman’s conduct including her previous history showed a willful or wanton disregard for her employer’s interests. This case should not apply to our clients’ case due to the conclusion of Rodman v.

New Mexico was considered using totality of circumstances and the “ last straw” doctrine which would not apply to our client because our client was

not reprimanded for any misconduct previous to her termination and our client did not have any employment policies to abide. Claim of Apodaca 108 N. M. 175, 769 P. 2d 88, (N. M. 1989) Apodaca appeals the district court decision, arguing the court erred in finding the administrative determination was unsupported by substantial evidence and was contrary to law.

Apodaca was terminated for refusing to conform to the standards of personal grooming and signing a personnel handbook about having acceptable hygiene and appearance. Definition of misconduct and the right to terminate. Did the conduct effect the employers business? Was there intentional misconduct used. If it is determined by the division that the individual has been discharged for misconduct connected with the individual's employment. Burger Time sought to establish Apodaca was terminate for misconduct. Therefore it fell upon Burger Time to show that Apodaca's refusal to change her hair color amounted to misconduct.

Burger Time failed to meet the burden of proof and was not able to establish misconduct that effected the business. Burger Time has the right to establish a grooming code for its employees and to revise its rules and to make hiring and firing decision in conformity with this policy. The decision of the trial court is reversed, stating no evidence by Apodaca's hair color significantly affected Burger Time's business. In this case, there is absolutely no evidence that the color of Apodaca's hair significantly affected Burger Time's business.

As our client's tattoo would not affect a business. Also, our client's employer had no tattoo policy. This case does significantly apply directly to our clients' case. In this case, rules and regulations were in place, but did not state

anything significant about having a certain color of hair while on duty.

Conclusion: Our client, Natalie Attired, age 23 was denied unemployment benefits for alleged misconduct from Bidy's Tea House. Client Attired received four evaluations while employed for a year by Bidy's.

She acquired a tattoo on her arm after she was warned by a senior employee not to get the tattoo. Attired was told by her supervisor to remove tattoo. She refused and was fired the following Friday. July 2010, she filed for unemployment and was denied declaring she was terminated for "misconduct." There is no employee manual or written policy about employee conduct. There was no decline in sales after Attired received the tattoo. Ms. Attired actions did not constitute misconduct. Reference: Claim of Apodaca 108 N. M. 175, 769 P. 2d 88, (N. M. 1989)